

REMARKS

Applicants elect Group I as defined by the examiner, i.e., claims 1-9, with traverse. The examiner has not set forward a clear case supporting the restriction requirement, and has not, therefore, met her initial burden to establish a *prima facie* case.

A serious burden on the examiner may be *prima facie* established by, e.g., separate classification (see MPEP 803). The compounds of claims 1-9 were classified by the examiner as being in classes 435, 560, and 562, those in claims 10-11 in classes 558, 560, 562, and 568. These classifications recited by the examiner overlap significantly, and do not, therefore, give *prima facie* support to the restriction requirement.

Further, it is the examiner's burden in making a restriction requirement to give reasons or examples demonstrating the independence and/or distinctness of the purported separate inventions. For instance, in MPEP §806.04(h), cited by the examiner, "an example" of the alternative use is required, though documentation need not be provided. In the office action, however, the examiner makes no specific example available to indicate that one of skill in the art would, in fact, view the intermediate compounds to be useful for insecticidal purposes. The reasoning itself does not rise to the level of evidence needed to meet the burden for establishing a *prima facie* case.

Additionally, where plural inventions are capable of being viewed as related in two ways, both applicable criteria for distinctness must be demonstrated to support a

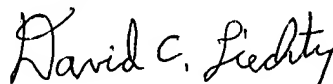
restriction requirement. Therefore, to fully support the restriction requirement, the examiner must give "reasons and/or examples" supporting the assertion that the process of Group I can be used with another materially different product. In the present office action, however, the examiner merely states that "the process for using the product can be practiced with another materially different product" (p.3). The examiner's burden is not met. Applicants cannot rebut this assertion because there is no specifically indicated product on which they may undertake analysis.

As the examiner has not met her burden in making this restriction requirement, applicants respectfully request that the claims be examined together, and that the restriction requirement be withdrawn.

In view of the foregoing amendments and remarks, applicants consider that the rejections of record have been obviated and respectfully solicit passage of the application to issue.

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Respectfully submitted,
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